

DW 05-125

**PENNICHUCK EAST UTILITIES, INC**

**Joint Petition by Northern Shores Water Co. and Pennichuck East Utilities, Inc. for  
Approval of the Transfer of the Northern Shores Water Utility Business, Real Interests and  
Franchise Rights**

**Order Approving Transfer**

**ORDER NO. 24,635**

**June 8, 2006**

**APPEARANCES:** John T. Pendleton, Esq. for Pennichuck East Utilities, Inc.; Marcia A.B. Thunberg, Esq. of the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On March 17, 2006, the New Hampshire Public Utilities Commission (Commission) issued Order *Nisi* No. 24,601 approving the proposed transfer of Northern Shores Water Company (Northern) water system and its associated franchise rights to Pennichuck East Utility, Inc. (PEU) upon the terms and conditions as specified in a joint petition. The Order *Nisi* set forth the procedural history for this docket in great detail and we will not repeat it here.

The Order *Nisi*, provided a mechanism for requesting a hearing; all persons interested in responding to the Order *Nisi* could submit their comments or file a written request for a hearing, stating the reason and basis for a hearing. On March 18, 2006, Robert and Patricia Hoey, customers of Northern, submitted a list of questions concerning the transaction and requested a hearing. On April 17, 2006, by secretarial letter, we postponed the effective date of Order No. 24,601 and set a hearing for May 1, 2006. This order results from that hearing.

## **II. STATEMENTS OF THE PARTICIPANTS AND STAFF**

### **A. Robert and Patricia Hoey**

Robert and Patricia Hoey stated at the hearing that most of their concerns were addressed by Staff and the parties. Their remaining concern involved the issue of whether and to what extent certain portions of their home and garage encroach on Northern's protective well radius easement. The Hoeyes stated that they have hired an attorney to resolve the easement encroachment issue. They did not object to PEU proceeding with the transaction with Northern.

### **B. Pennichuck East Utilities, Inc.**

PEU stated that the purchase of the water system is subject to the easement encroachment issue being resolved. PEU stated its understanding that the Hoeyes will do some initial engineering to locate exactly where the home and garage is in relation to the easement. PEU plans to contact the Department of Environmental Services (DES) to see if there are any other issues that need to be resolved. PEU anticipates that a resolution may require some compromise or additional real property interest being conveyed from the Hoeyes. PEU does not intend to proceed with the closing until these issues are resolved.

### **C. Staff**

Staff supports Northern and PEU's petition. The encroachment issue does not change their opinion that the Commission ought to approve the transfer. Staff does not believe this new information should change the Commission's approval of the transfer. Staff reasoned that the encroachment issue would still be an issue whether Northern or PEU owned the system. Staff posited that, if anything, the pressure to close the transaction would accelerate resolution of the issue. Staff believes that DES will adequately address the issue and that their oversight will produce either waivers or some other resolution to the encroachment issue. For the reasons stated in its recommendation letter, Staff believes that the

acquiring company still possesses the managerial, technical, and financial expertise to operate this system and requests the Commission approve the transfer.

### **III. COMMISSION ANALYSIS**

After careful consideration of the additional evidence and arguments presented at the May 1, 2006 hearing, we do not find cause to change our determination that PEU's proposed acquisition of Northern is in the public interest. The issues raised by Mr. and Mrs. Hoey are issues that impact the terms of the Standard Agreement entered into between PEU and Northern. Conditions precedent to effectuating a closing pursuant to that agreement include: inspection of equipment to ensure it meets PEU's standards; deliverance of a certificate of title and lien holder consent; establishment of good and marketable title; and Commission approval. Questions of whether the Hoeys have encroached on the easement and how that affects deliverance of a certificate of title or good and marketable title do not bear on the issue of whether the transfer to PEU is in the public interest. At hearing, PEU stated some initial engineering would be completed by the Hoey's and that PEU would take that information to DES. Hearing Transcript of May 1, 2006 (Tr. 5/1/06) at 8 lines 13-18. PEU stated that it would not complete the proposed transaction until requirements of DES were satisfied. Tr. 5/1/06 at 10 lines 5-15.

We understand that it is the intent of the parties to resolve the easement issue but we also understand that if specific conditions are not satisfied, then the transaction may not occur. In order to lend some certainty to the situation, we find it reasonable to require completion of the transfer by a date certain. We will therefore allow the parties until December 31, 2006, to complete the proposed transaction.

**Based upon the foregoing, it is hereby**

**ORDERED**, that pursuant to our authority under RSA 365:28 to alter orders, this order shall be deemed to supersede our Order *Nisi* No. 24,601 (March 17, 2006); and it is

**FURTHER ORDERED**, that the proposed transfer of the Northern Shores Water Company water system and its associated franchise rights to Pennichuck East Utility, Inc. upon the terms and conditions as specified in the joint petition is **APPROVED**; and it is

**FURTHER ORDERED**, that this approval is valid so long as the parties have completed the transfer by December 31, 2006; and it is

**FURTHER ORDERED**, that the franchise area within which Northern Shores Water Company currently serves is hereafter established as a permanent franchise; and it is

**FURTHER ORDERED**, that Pennichuck East Utility, Inc. is authorized to charge the current flat rate for water service to the Northern Shores' customers until such time as the water service of each customer is metered, but in no case later than six months after closing on the transfer; and it is

**FURTHER ORDERED**, that Pennichuck East Utility, Inc. is authorized to charge its currently authorized PEU-A rate for metered service once a water meter is installed at each service connection; and it is

**FURTHER ORDERED**, that the Pennichuck East Utility, Inc. shall cause a copy of this Order to be delivered to each current Northern Shores customer no later than June 23, 2006 and to be documented by affidavit filed with this office on or before July 7, 2006; and it is

**FURTHER ORDERED**, that Pennichuck East Utility, Inc. shall file a compliance tariff with the Commission within thirty (30) days of completion of the proposed transaction, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this eighth day of June,  
2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary